

INTRODUCTION

- [1] The Landlord and the Tenant filed applications seeking the security deposit.

DISPOSITION

- [2] I find that the Landlord must return to the Tenant the security deposit, including interest, in the amount of \$1,514.37.

BACKGROUND

- [3] The Landlord and the Tenant signed a written, two-page, fixed-term tenancy agreement for the period of November 1, 2024 to May 31, 2025. A security deposit of \$1,500.00 was paid on September 24, 2024. Rent in the amount of \$1,500.00 was due on the first day of the month.
- [4] The Tenant never moved into the House.
- [5] On November 5, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Residential Tenancy Office (the "Rental Office") seeking return of his security deposit.
- [6] On November 7, 2024 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Rental Office seeking to retain the security deposit.
- [7] The Tenant Application and the Landlord Application are referred to collectively as the "Applications" in this decision.
- [8] On December 17, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 9, 2025 along with a copy of the Applications.
- [9] On January 3, 2025 the Rental Office emailed the parties a 26-page PDF document (the "Evidence Package" or "EP").
- [10] On January 5, 2025 the Tenant sent two emails to the Rental Office with additional evidence (the "Additional Evidence").
- [11] On January 9, 2025 the Tenant, the Landlord, the Landlord's representative (the "Representative") and the Landlord's witness ("LW1") participated in a teleconference hearing. The Representative had not received the Additional Evidence prior to the hearing. The Additional Evidence was provided to the Representative during the hearing. The parties confirmed receipt of the Evidence Package and the Additional Evidence and the parties also confirmed that all of the documents submitted to the Rental Office were included.

ISSUE

- A. Must the Landlord return the Tenant's security deposit?

ANALYSIS**Attempted Settlement Evidence**

- [12] The Additional Evidence and a portion of the parties' evidence at the hearing address the Representative's attempt to settle the Applications on behalf of the Landlord.
- [13] I note that, generally speaking, a party may attempt to settle a matter for reasons unrelated to the strength of their case.

- [14] I am not satisfied in this case that the Representative's attempt to settle the dispute has any relevance to the strength of the Landlord's case.
- [15] I further note that settlement negotiations are frequently considered privileged communications that would not be part of the evidence for determination of a dispute (see paragraph [7] of *Fraser v. Runighan*, 2020 PECA 5 regarding the applicable test).

Space Rented

- [16] For the reasons below I find that the parties did not agree on the space that was being rented and therefore the security deposit, including interest, must be returned to the Tenant.
- [17] The Landlord's property was originally a single family home with an attached vehicle garage that the Landlord purchased in 2021. The garage was approximately 15 feet by 20 feet in size. The Landlord had the vehicle garage changed to a living space with one bathroom, which the Landlord referred to as the "Garage Suite." The Garage Suite does not have a separate civic address. The door that previously connected the main part of the house and the garage now connects the main part of the house and the Garage Studio.
- [18] The entire building, including the Garage Suite, is referred to as the "House" in this decision.
- [19] The main part of the House has four bedrooms and two bathrooms. One of the basement bedrooms was to be closed off during the tenancy to store the Landlord's belongings.
- [20] The Tenant exclusively dealt with the Landlord regarding the viewings of the House and the signing of the tenancy agreement.
- [21] The Tenant saw a listing for the House on Facebook Marketplace which did not mention the Garage Suite. The Tenant met with the Landlord at the House on two occasions around September 21 and 24, 2024. The Tenant only realized that there was a Garage Suite in the House when he attended the property.
- [22] The Tenant asked if the Landlord was renting out the entire House or if the House would be shared with anyone else. Landlord told the Tenant that she would be going back to Toronto for the Winter. The Tenant stated that the Landlord assured him that he would have exclusive use of the entire house except for a brief period before November 1, 2024 and around Christmas, when the Landlord would use the Garage Suite. The Tenant planned to be away from the House during Christmas and he did not oppose the Landlord using the Garage Suite around that time. The Tenant understood that he would not be occupying the Garage Suite.
- [23] The tenancy agreement states that the space rented was "*Single Family Home*" which reaffirmed the Tenant's understanding that no one else would be living in the House.
- [24] The space being rented later became an issue on October 17, 2024 when the Landlord began the following correspondence with the Tenant (EP21):

Landlord

"Maybe I live in my studio until around November 20, because I wait my doctor's documents report"

Tenant

"Oh?"

Landlord

"It's no problem to move in next week"

Tenant

"Ok. Are you planning to also be back at Christmas?"

Landlord

"Maybe Christmas don't need back"

Tenant

"I would not have chosen to rent this house if it had been made to clear to me up front how much you will be there. I am disappointed"

Landlord

"I'm so sorry I didn't realize my GP brought my checkup forward."

- [25] The Representative argues that the correspondence did not provide certainty that the Landlord would in fact be occupying the Garage Suite in November of 2024. The Representative also argues that the Landlord could have attempted to live elsewhere if the Tenant wanted the entire House for himself.
- [26] Based upon the evidence presented I am not satisfied that the parties were in agreement regarding the terms of the space being rented. I am satisfied that the Tenant understood that the Landlord would not be occupying the House during the tenancy except for a brief period before November 1, 2024 and around Christmas. This is consistent with the terms of the tenancy agreement, which states that a "Single Family Home" was being rented.
- [27] I am not satisfied that the Landlord's first October 17, 2024 message, quoted above, intended to open a discussion about the Landlord using the Garage Suite in November 2024. The Landlord did not phrase her usage of the Garage Suite up to November 20, 2024 as a question to the Tenant. Instead, the plain wording of the message informs that Tenant that occupation of the Garage Suite may happen. Further, when the Tenant expressed his discontent, the Landlord did not take back her statement regarding the Garage Suite. Based upon the correspondence, the Landlord communicated to the Tenant that she could use the Garage Suite, regardless of the Tenant's discontent.
- [28] As a result, I am not satisfied that the parties agreed upon the space being rented, which is a fundamental part of the tenancy agreement.
- [29] Further, the importance of the Landlord's usage of the Garage Suite is shown in the Landlord's September 23, 2024 message to the Tenant (EP11). At that time the Landlord stated that the Tenant could sign the tenancy agreement if he agreed to the Landlord using the Garage Suite around Christmas.
- [30] I find that the Landlord must return to the Tenant the security deposit, including interest, because the parties did not agree on a fundamental term of the tenancy.
- [31] The Landlord's communications to the Tenant on October 17, 2024 raise an alternative issue regarding anticipatory breach of the tenancy agreement. However, as I have already determined that the parties did not agree on a fundamental term of the tenancy, it is unnecessary to determine this alternative matter.

[32] I find that the Tenant Application is allowed and the Landlord Application is denied.

Required Information

[33] Since April 8, 2023 landlords on Prince Edward Island have been required to prepare a written tenancy agreement containing specific information, including the previous rent charged. Clause 11(2)(g) of the *Residential Tenancy Act* states:

The landlord shall ensure that the tenancy agreement complies with the requirements of this Act and the regulations and includes

...

(g) the amount of rent that was charged, and the services and facilities that were provided, to the previous tenant of the rental unit, unless there was no previous tenant;

[34] The tenancy agreement signed by the parties appears to be based upon the Rental Office's standard form.

[35] However, the "Previous Tenant" section of the standard form tenancy agreement is not included:

PREVIOUS TENANT(S)

5. The amount of rent charged to the previous Tenant(s) was: _____,
and included the following services and facilities: _____.

[36] The Landlord must ensure that all future tenancy agreements contain all mandatory information.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant the security deposit, plus interest, in the amount of \$1,514.37, by March 20, 2025.

DATED at Charlottetown, Prince Edward Island, this 20th day of February, 2025.

(sgd.) Andrew Cudmore

Andrew Cudmore
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the "Commission") by serving a Notice of Appeal with the Commission and every party to this Order within **20 days of this Order**. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.